

United States Court of Appeals  
FOR THE EIGHTH CIRCUIT

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No. 97-2460

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Robert James Rousseau, Jr.; Billy  
Wade Kays,

Appellants,

v.

Department of Mental Health of the  
State of Missouri; Steve Reeves; Phillip  
Morris, Inc.; R. J. Reynolds, Inc.,

Appellees.

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Appeal from the United States  
District Court for the  
Western District of Missouri.

**[UNPUBLISHED]**

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Submitted: January 28, 1998  
Filed: February 12, 1998

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Before McMILLIAN, LOKEN, and MURPHY, Circuit Judges.

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PER CURIAM.

Robert Rousseau, Jr., and Billy Wade Kays were committed to Fulton State Hospital after being found not guilty of crimes by reason of mental disease or defect. They filed this action under 42 U.S.C. § 1983 alleging that hospital officials refuse to give them cigarettes that would relieve their schizophrenia, and seeking damages from cigarette manufacturers for concealing that smoking is habit forming. Rousseau and

Kays appeal the district court's<sup>1</sup> order dismissing their action for failure to state a claim. After de novo review of the record, we conclude their complaint did not allege a colorable civil rights claim. Accordingly, we affirm and deny their motion for appointment of counsel as moot.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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<sup>1</sup>The HONORABLE NANETTE K. LAUGHREY, United States District Judge for the Western District of Missouri, adopting the report and recommendations of the HONORABLE WILLIAM A. KNOX, United States Magistrate Judge for the Western District of Missouri.